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ANNE E. BARSCHALL
80 BENEDICT AVENUE
TARRYTOWN, NY 10591-4142

In re application of: Ming-Ling Lo et al.)
Serial No.: 09/466,627) DECISION ON PETITION FOR
Filed: 12/17/1999) SUPERVISORY REVIEW
For: METHOD AND APPARATUS FOR) UNDER 37 CFR §1.181
CONVERTING BETWEEN DATA)
SETS AND XML DOCUMENTS)

This is a decision on the petition under 37 CFR § 1.181, filed January 10, 2007 requesting the Commissioner to invoke his supervisory authority and enter the declaration under 37 CFR § 1.131 filed November 10, 2006 which was refused entry in the Advisory action mailed on December 5, 2006.

The petition is **DENIED**.

RELIEF REQUESTED

The instant petition filed under 37 CFR 1.181 requests the following relief: entry of the declaration under 37 C.F.R. §1.131, filed November 10, 2006 after final rejection mailed July 17, 2006.

REQUIREMENTS

A petition under 37 CFR §1.181 must include: (1) a statement of facts involved and (2) the point or points to be reviewed and the action requested. Note, the mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. In addition § 1.181(f) sets forth: any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely.

The petition initially filed on January 10, 2007 includes elements (1) and (2) above. The petition was filed within two months of the final Office action from which the relief is requested.

ANALYSIS

Petitioner presents the following arguments in support of the position that the declaration under 37 C.F.R. §1.131 should be entered:

The declaration submitted by Ming-Ling Lo after the final rejection of July 17, 2006 should be entered and considered by the Examiner because:

“Applicant could not have anticipated that the Examiner would require this declaration in the final office action, because the Examiner's requirement for this declaration was improper. The Examiner improperly cites 37 CFR 1.47 as a reason for requiring a declaration under rule 131. However rule 47 is only applicable to declarations under rule 63, not to declarations under rule 131. Rule 131 is permissive about who "may" file. Applicant was merely trying to be extra cooperative by filing the declaration in response to the Examiner's improper requirement. The Examiner's statement that this declaration could have been filed earlier is therefore not supported by the facts.”

The relevant section of the MPEP concerning seasonable presentation of Affidavits or declarations under 37 CFR § 1.131 is set forth in MPEP § 715.09 (C). Who may make an affidavit is set forth in MPEP section 715.04. Section 715 of the MPEP quotes rule 1.131 which also sets forth who may properly file an affidavit. Also 37 CFR § 1.116 sets forth conditions when an affidavit may be entered after a final rejection.

Rule 1.131 specifically states, "the inventor of the subject matter of the rejected claim" may file the affidavit. The inventor of the claimed subject matter in the instant application is both Ming-Ling Lo and Shyh-kwei Chen. Even though the examiner relied on 37 CFR 1.47, rather than 37 CFR § 1.131, as a reason to show that both inventors must sign, it does not change the fact that both inventors were required to sign, as set forth in 37 CFR § 1.131, as early as June 17, 2004. The examiner correctly noted in the final rejection of July 17, 2006, the insufficiency in execution requirements of the 37 CFR § 1.131 affidavit filed by Shyh-kwei Chen on June 17, 2004.

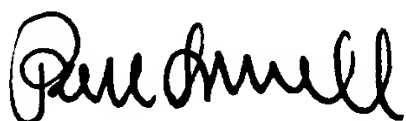
Therefore, in accordance with current Office practice and procedures, the declaration submitted by inventor Ming-Ling Lo should have been submitted earlier either when the first declarations were filed on June 17, 2004 by inventor Shyh-kwei Chen and or at least before the final rejection of July 17, 2006.

CONCLUSION

For the above stated reasons, the petition for supervisory review seeking entry of the declaration under 37 CFR § 1.131 filed November 10, 2006 after a Final Rejection, specifically, to enter said affidavit for the examiner's consideration, is **DENIED**.

The application is being forwarded to the Examiner for appropriate action.

Any inquiries related to this decision may be directed to Pat Salce at (571) 272-3610.



Paul Sewell
Director, Technology Center 2100
Computer Architecture, Software, and Information Security